

*This checklist was developed for use by examiners as part of policy and forms review.*

**Checklist for Individual Variable Annuity Products**

Insurer \_\_\_\_\_

NAIC# \_\_\_\_\_

Name of Product \_\_\_\_\_

Contact Person, Title \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Date received \_\_\_\_\_ Reviewed by \_\_\_\_\_

SRB # \_\_\_\_\_

Notes:

## **Contents of Actuarial Memorandum**

- \_\_\_ Each submission must be accompanied by an actuarial memorandum prepared and signed by an actuary that includes the following:
  - \_\_\_ A description of the product;
  - \_\_\_ The mathematical formulas, sample numerical calculations and a detailed statement of the method used to compute contract values and reserves and nonforfeiture benefits;
    - \_\_\_ A statement that each form's nonforfeiture values are not less than those required by Massachusetts law OR
    - \_\_\_ A statement that no nonforfeiture values are required by Massachusetts law, and a detailed demonstration on how net premiums and/or values meet the exclusionary requirement of M.G.L. c. 175, § 144A. *SRB Bulletin 90-02*
- \_\_\_ Any additional data, tables, and information necessary for a comprehensive review of the forms. *SRB Bulletin 90-02*

## General Requirements

— Each submission must include a certification by a company official that each form meets the objective standards of M.G.L. c. 175 §2B. If an insurer feels that a form is exempt from chapter 175 §2B, the basis for the contention must be stated in the cover letter. The term "text" includes all printed matter except the name and address of the insurer, name or title of the contract, the brief description, if any, captions and subcaptions, and schedule pages and tables. *M.G.L. c. 175 §2B*

— The text achieves a minimum Flesch score of 50. The Flesch score for each form must be stated in the certification: a statement to the effect that the score exceeds 50 is not permitted.

— The other objective standards of Chapter 175 §2B, section 1 are met:

- a. It is printed, except for tables, in not less than ten point type, one point leaded.
- b. The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text of the policy and any endorsements or riders;
- c. It contains a table of contents or an alphabetical subject index;
- d. The width of margins and ink to paper contrast do not unreasonably interfere with the readability of the form; and
- e. The organization of the content of the policy and the summary of the policy is conducive to understandability of the form.

**Note: All provisions of law relative to the filing of policy forms shall also apply to all applications designed to be attached to such policy forms and when so attached to constitute a part of the contract. *M.G.L. c. 175 § 192***

**Note: Section 2B does not apply to an annuity that is a security subject to federal jurisdiction.**

— All contracts must be headed by the corporate name of the company. If two or more insurers are under a common management and represent themselves to be or are customarily known as an insurance company group or similar insurance trade designation, they may, with the approval of the commissioner, head or title contracts with the name of the group or similar trade designation or with the names of the individual members of the group, provided that the company assuming the insurance is specifically identified. *M.G.L. c. 175, §18*

— All contracts must be signed by the insurer's secretary or an assistant secretary, or in their absence by a temporary secretary, and by its president or a vice-president, or in their absence by two directors. Riders or endorsements may be signed by one of the aforesaid officers of the company. **(Note: does not apply to riders or endorsements providing special benefits under M.G.L. c. 175, § 24.)** A facsimile of the required signature is acceptable. *M.G.L. c. 175, §33*

— An annuity must contain on the first page in bold letters a plain description of the policy, "so fully defining its character, including dividend periods and other peculiarities, that the holder thereof shall not be likely to mistake the nature or scope of the contract." *M.G.L. c. 175, §129*

Variable annuities must comply with M.G.L. c. 175, § 132G: *All of the following provisions should be cited as "M.G.L. c. 175, § 132G."*

- \_\_\_ The carrier must be licensed to offer variable annuities.
- \_\_\_ All amounts received by the life company which are required by a contract on a variable basis to be applied to provide variable benefits, payments or values thereunder must be placed in the appropriate separate account or accounts, and, if and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the life company may conduct.
- \_\_\_ The income, if any, and gains or losses, realized or unrealized, on each such separate account must be credited to or charged against the amounts placed in such account without regard to the other income, gains or losses of the company.
- \_\_\_ Amounts payable to the life company under any contract on a variable basis may, with the consent of the life company, be paid by transferring investments to the life company.
- \_\_\_ Except as otherwise provided in clause (i) of the following paragraph, assets in any separate account must be valued at their market value at the date as of which valued in accordance with the terms of the applicable contracts, or if there is no readily available market, then in accordance with the terms of such contracts.
- \_\_\_ The life company's reserve liability for contracts on a variable basis shall be in accordance with actuarial procedures which recognize the variable nature of the benefits, payments or values to be provided.
- \_\_\_ A contract on a variable basis may provide for benefits payable in fixed amounts and for values or funds guaranteed as to principal amount or stated rate of interest; provided, that to the extent that the life company's reserve liability with respect to guaranteed benefits, values or funds is maintained in any separate account, either (i) a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the requirements applicable to the life company's general investment account; provided, however, that such guaranteed separate account need not comply with the requirement of paragraph 14A of section sixty-three to the effect that not more than one-half of the reserve of any domestic stock or mutual life company shall be invested in corporate obligations authorized under said paragraph 14A, and shall be valued and computed as provided in section twenty-five or (ii) the insurer shall annually prepare an actuarial opinion that, after taking into account any risk charge payable from the assets of such separate account with respect to such guarantee, the assets in such separate account make good and sufficient provision for the fixed and guaranteed obligations of the insurer under such contract, and such opinion shall be accompanied by a memorandum of the actuary providing the opinion describing the calculations made in support of such opinion and the assumptions used in the calculations. Such actuarial opinion and accompanying memorandum shall be maintained in the insurer's home office and be available for examination.

## Mandatory Provisions

\_\_\_ Every deferred annuity contract, other than a single premium contract, issued and delivered in the commonwealth by a domestic life company shall provide that, in the event of the nonpayment of any premium after three full years' premiums have been paid, the annuity shall, without any further act or stipulation, be converted into a paid-up annuity for such proportion of the original annuity as the number of completed years' premiums paid bears to the total number of premiums required under the contract; provided, however that this subdivision shall not apply to any annuity contract subject to the provisions of section one hundred and forty-four A. *M.G.L. c. 175, § 144, 9*

\_\_\_ There must be a "free look" period of at least 10 days. *M.G.L. c. 176D.*

\_\_\_ Is this a policy that may be used for replacement?

\_\_\_ yes                      \_\_\_ no

If yes, the insurer must include a notice in the policy, or a separate notice to be delivered with a replacement policy, that in the event of replacement, the free look period is 20 days. *211 CMR 34.06(1)(d).*

Compliance with M.G.L. c. 175, § 118:

\_\_\_ Must state the amount of benefits payable, the manner of payment and the consideration;

\_\_\_ Benefits cannot be contingent upon assessments upon survivors

Note: extra compensation may be charged by a company to the insured for engaging in naval or military service in time of war.

**Note:** for variable annuities, compliance with 132G ("Any contract on a variable basis delivered or issued for delivery in this commonwealth shall contain a statement of the essential features of the procedure to be followed by the life company in determining the amount of variable benefits, payments or values thereunder. Any such contract, shall state that the amount of variable benefits, payments or values thereunder may decrease or increase according to such procedure, and shall contain on its first page, in a prominent position, a statement that the benefits, payments or values thereunder are on a variable basis") will meet the requirements of this section.

\_\_\_ Any contract on a variable basis delivered or issued for delivery in this commonwealth must contain a statement of the essential features of the procedure to be followed by the life company in determining the amount of variable benefits, payments or values thereunder. *M.G.L. c. 175, §132G.*

\_\_\_ Any such contract, must state that the amount of variable benefits, payments or values thereunder may decrease or increase according to such procedure, and must contain on its first page, in a prominent position, a statement that the benefits, payments or values thereunder are on a variable basis. *M.G.L. c. 175, §132G*

## **Prohibitions**

### *General Prohibitions*

Prohibitions under M.G.L. c. 175, § 22: No annuity may contain any condition, stipulation or agreement:

- \_\_\_ Depriving the courts of the commonwealth of jurisdiction of actions against the company;
- \_\_\_ Limiting the time for commencing actions against the company to a period of less than two years from the time when the cause of action accrues;
- \_\_\_ Making any person appointed and licensed as the company's agent the agent of the applicant, insured, policyholder or contract holder for any purpose;
- \_\_\_ Providing that no person shall be deemed an agent of the company unless authorized by the company in writing;
- \_\_\_ Providing that any policy or contract made in the commonwealth on lives, property or interests therein shall be governed by the laws of any other state or country.
  
- \_\_\_ Contracts may not include a requirement that all disputes or controversies be resolved by binding arbitration. But note that any provision that says the parties *may* agree to mediation or arbitration is permissible. The prohibition is based on the requirement that applicants waive their legal rights, or the rights of beneficiaries, set forth in M.G.L. c. 93A, § 9.
  
- \_\_\_ Contracts may not include a limitation or exclusion on the recovery of punitive damages in the event of a dispute or controversy. *Such a limitation would be inconsistent with rights granted under M.G.L. c. 93A.*

### *Anti-discrimination provisions*

- \_\_\_ No life company shall make or permit any distinction or discrimination in favor of individuals between insureds of the same class and equal expectation of life in the amount or payment of premiums or rates charged for an annuity or pure endowment contracts, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. *M.G.L. c. 175, § 120*

## **Optional Provisions**

### *Optional conversion, alteration, or exchange of contracts*

The following provisions may in substance be included (*i.e.* the contract does not have to have these provision; however, if included, they must be substantially similar to the following):

- \_\_\_ Any life company may, at the request of the holder, exchange, alter or convert any annuity issued by it, or a company that is admitted and authorized under chapter 175 and is an affiliate of it, as defined in section 206, hereinafter called the original policy, for or into any policy of life or endowment insurance, hereinafter called the rewritten policy, as of the date of the most

recently issued original policy or as of the current date, or as of any intermediate date, conforming with the laws in force as of the date of issue which the rewritten policy bears; provided, that:

— if the rewritten policy bears a date prior to the date of application for exchange, alteration or conversion, the amount of insurance under the rewritten policy may not exceed the greater of (a) the amount of insurance under the original policy or policies if of life or endowment insurance, or (b) the amount of insurance which the premium paid for the original policy or policies would have purchased if the rewritten policy had been originally issued as of the date of issue it bears. Nothing in section 120 shall be construed to prohibit the exchange, alteration or conversion of a policy of life or endowment insurance or annuity under this section, and sections 123 and 130 shall not apply to a rewritten policy issued under the authority of this section. Nothing in section 131 or section 132 shall be construed to prohibit making the application for the original policy, if one of life or endowment insurance, or the application for the rewritten policy issued under authority of this section, or both such applications, a part of the rewritten policy, by endorsing thereon or attaching thereto a copy of either or both such applications. Nothing in said section one hundred and thirty-two shall be construed to prohibit the incorporation, by a rider or endorsement or otherwise, in a rewritten policy issued under authority of this section and bearing a then current date or an intermediate date of a stipulation making the incontestable provision required by said section 132 operative from the date of issue of the most recently issued original policy, if one of life or endowment insurance. *M.G.L. c. 175, § 139*

## Nonforfeiture Requirements

M.G.L. c. 175, § 144A applies to the fixed account, if any, of variable annuities.

Note that every deferred annuity contract, other than a single premium contract, issued and delivered in the commonwealth by a domestic life company shall provide that, in the event of the nonpayment of any premium after three full years' premiums have been paid, the annuity shall, without any further act or stipulation, be converted into a paid-up annuity for such proportion of the original annuity as the number of completed years' premiums paid bears to the total number of premiums required under the contract; provided, however that this subdivision shall not apply to any annuity contract subject to the provisions of section one hundred and forty-four A.

*M.G.L. c. 175, § 144, 9*

M.G.L. c. 175, § 144A does not apply to the following:

- ☐ any reinsurance,
- ☐ group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code,
- ☐ premium deposit fund,
- ☐ variable annuity,
- ☐ investment annuity,
- ☐ immediate annuity,
- ☐ any deferred annuity contract after annuity payments have commenced,
- ☐ reversionary annuity, or
- ☐ any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract. *M.G.L. c. 175, § 144A, 10.*

**Note:** Notwithstanding the requirements of M.G.L. c. 175, § 144A, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than \$20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

### *Requirements of § 144A*

No contract of annuity may be delivered or issued for delivery in Massachusetts unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:



- \_\_\_ That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subdivisions 3, 4, 5, 6 and 8 of M.G.L. c. 175, § 144A. *M.G.L. c. 175, § 144A, 1.(a)*
- \_\_\_ If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subdivisions 3, 4, 6 and 8 of M.G.L. c. 175, § 144A. The company may reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract. *M.G.L. c. 175, § 144A, 1.(b).*
- \_\_\_ A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits. *M.G.L. c. 175, § 144A, 1.(c).*
- \_\_\_ A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract. *M.G.L. c. 175, § 144A, 1.(d).*